

## *Multistate Tax Commission*



TO: PPWG – UNIFORMITY COMMITTEE LIAISON GROUP

FROM: ALAN H. FRIEDMAN, CONVENOR

SUBJECT: MARCH 3, 1999 TELECONFERENCE

DATE: MARCH 1, 1999

Attached is one more effort at a definition of a unitary business enterprise under the Dependency/Contribution test. I have tried to incorporate the comments made since our last teleconference. Please review all of the alternatives for our teleconference.

Because at least one state wishes to have the Uniformity Committee review a disjunctive test alternative, one will be passed along, accompanied with comments of concern expressed regarding its constitutionality. I have set out some more alternatives within the Disjunctive and Conjunctive test proposals for our discussion on **March 3<sup>rd</sup>**. Again, remember that you are to call into **703-736-7307 at 1:30 PM (Eastern)** and ask for the MTC conference call that I am moderating.

In addition to the input on the test proposals, I would like some input on time frames for future efforts. I have received some strong pushback that we were going too fast. I have asked those that felt the need to proceed more slowly to suggest a time frame for the work on the Three Unities and *Mobil* Factor tests. I would much appreciate your thoughts as well, so we can set more realistic goals on March 3<sup>rd</sup>. If we do, I would anticipate the taxpayer representatives who had to drop out to re-join us.

Talk to you all soon.

**PROPOSED DEFINITION ONE OF  
DEPENDENCY/CONTRIBUTION TEST  
March 1, 1999**

**(DISJUNCTIVE)**

**I. Dependency/Contribution Test for Determining Unitary Business Enterprise.**

A. Definitions.

For the purposes of this section, the following definitions shall apply and control:

1. "Entity" means each type of organization that [this State's income/franchise law] recognizes as a reporting person, except such term does not include an individual or [insert other applicable exceptions].
2. "Segment" means a subdivision of an entity consisting of any grouping of business activities, functions or transactions.
3. "Enterprise" means a single entity or two or more entities under common ownership or control with respect to which [this State's income/franchise tax] requires a determination of the unitary business or unitary businesses being conducted by the entity or entities within this State.

B. Dependency/Contribution Test.

**Warren disjunctive:**

Where an enterprise consists of more than one business segment and the operation of one segment is dependent upon or contributes to the operation of another segment, these segments constitute a unitary business.

**Alternative 1.**

A unitary business enterprise exists where the operation of an entity or segment within the enterprise is either dependent upon or contributes to the operation of another entity or segment within the enterprise. In order to satisfy this test, the entities and segments need not be interdependent or of mutual benefit to one another.

## **Alternative 2.**

Entities are unitary with one another when the operation of the entity or one or more segments thereof is either dependent upon or contributes to the operation of the other entity or any segment thereof. In order to satisfy this test, the entities and segments need not be interdependent or of mutual benefit to one another.

### **C. Facts and Circumstances; Presumptions.**

The determination of whether the operation of an entity or segment depends upon or contributes to the operation of another shall be determined by the facts and circumstances of each case. It shall be presumed, subject to rebuttal, that sufficient dependency or contribution exists between entities or segments thereof to form a unitary business enterprise when one or more of the following factors are present:

1. When the principal activities of the entities or segments are in the same general line of business. Illustrations of the same general line of business, but not limitations, are: manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation or finance; or
2. When the entities or segments are engaged in different steps of a vertically structured business. Illustrations of such different steps, but not limitations, are: exploration, mining/drilling, production, refining, marketing, and/or transportation of natural resources; or
3. When there exists a strong centralized management among the entities or segments. Illustrations of such management, but not limitations, are: when activities such as purchasing, accounting, financing, tax compliance, legal services, human resources, health/retirement plans, product lines, capital investment, marketing and the like are determined by a central person or committee and not by each entity or segment; or
4. when the business segments are in the same entity.

**[Note: There was support expressed to eliminate this subparagraph 4. as possibly duplicative of the other three subparagraphs, especially subparagraph 3.]**

**PROPOSED DEFINITION TWO OF  
DEPENDENCY/CONTRIBUTION TEST**  
**March 1, 1999**

**(CONJUNCTIVE)**

**I.     **Dependency/Contribution Test for Determining  
Unitary Business Enterprise.****

A.       Definitions.

For the purposes of this section, the following definitions shall apply and control:

1.       “Entity” means each type of organization that [this State’s income/franchise law] recognizes as a reporting person, except such term does not include an individual or [insert other applicable exceptions].
2.       “Segment” means a subdivision of an entity consisting of any grouping of business activities, functions or transactions.
3.       “Enterprise” means a single entity or two or more entities under common ownership or control with respect to which [this State’s income/franchise tax] requires a determination of the unitary business or unitary businesses being conducted by the entity or entities within this State.

B.       Dependency/Contribution Test.

Where an enterprise consists of more than one business segment and the operation of one segment is dependent upon or contributes to the operation of another segment, these segments constitute a unitary business. Stated another way, the test is whether the various segments are interdependent and of mutual benefit to one another.

**Alternative 1.**

A unitary business enterprise exists where the operation of an entity or segment within the enterprise is either dependent upon or contributes to the operation of another entity or segment within the enterprise. In order to satisfy this test, the entities and segments must be interdependent or of mutual benefit to one another.

## **Alternative 2.**

Entities are unitary with one another when the operation of the entity or one or more segments thereof is either dependent upon or contributes to the operation of the other entity or any segment thereof. In order to satisfy this test, the entities and segments must be interdependent or of mutual benefit to one another.

### **C. Facts and Circumstances; Presumptions.**

The determination of whether the operation of an entity or segment depends upon or contributes to the operation of another shall be determined by the facts and circumstances of each case. It shall be presumed, subject to rebuttal, that sufficient dependency or contribution exists between entities or segments thereof to form a unitary business enterprise when one or more of the following factors are present:

1. When the principal activities of the entities or segments are in the same general line of business. Illustrations of the same general line of business, but not limitations, are: manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation or finance; or
2. When the entities or segments are engaged in different steps of a vertically structured business. Illustrations of such different steps, but not limitations, are: exploration, mining/drilling, production, refining, marketing, and/or transportation of natural resources; or
3. When there exists a strong centralized management among the entities or segments. Illustrations of such management, but not limitations, are: when activities such as purchasing, accounting, financing, tax compliance, legal services, human resources, health/retirement plans, product lines, capital investment, marketing and the like are determined by a central person or committee and not by each entity or segment; or
4. when the business segments are in the same entity.

**[Note: There was support expressed to eliminate this subparagraph 4. as possibly duplicative of the other three subparagraphs, especially subparagraph 3.]**